

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RYAN NOAH SHAPIRO,
12 James Way
Cambridge, MA 02141

PLAINTIFF

VS.

DEPARTMENT OF JUSTICE,
950 Pennsylvania Ave., NW
Washington, DC 20530

DEFENDANT

)
)
) Judge _____
) Civil Action No. _____

COMPLAINT

THE PARTIES

1. Plaintiff Ryan Noah Shapiro is a citizen of Massachusetts residing at 12 James Way, Cambridge, MA 02141.
2. Plaintiff is a Ph.D. candidate in the Department of Science, Technology & Society at the Massachusetts Institute of Technology. Plaintiff's research focuses on disputes over animals and national security from the late nineteenth century to the present. A core focus of Plaintiff's research is the substantial role played by federal law enforcement agencies in conflicts over animal use and protection. In particular, Plaintiff's research explores the nature and evolution of federal law enforcement agencies' understanding and handling of the animal rights and animal protection movements from the Cold War era to the present. To this end, numerous leading animal rights activists from the 1970's through today have signed privacy waivers allowing

Plaintiff to request their records through the Freedom of Information Act and Privacy Act.

3. Plaintiff's research dovetails with that of scholars and journalists analyzing today's "Green Scare." As defined by award-winning journalist and author Will Potter, the Green Scare is the ongoing "disproportionate, heavy-handed government crackdown on the animal rights and environmental movements, and the reckless use of the word 'terrorism'" in the process. *See* <http://www.greenisthenewred.com/blog/green-scare>. Supporting this understanding is the FBI's 2005 designation of the animal rights and environmental movements as the leading domestic terror threats despite the fact that neither movement has ever physically injured a single person in the movements' decades of existence in the United States. *See* <http://www.cnn.com/2005/US/08/24/schuster.column/index.html>. Likewise, the FBI-supported 2006 passage of the Animal Enterprise Terrorism Act (AETA) has been widely condemned as a pernicious infringement upon protected speech and an effort to employ the rhetoric and apparatus of national security to marginalize animal protectionists as threats to American security. The New York-based Center for Constitutional Rights filed a federal lawsuit this past December in Boston challenging the constitutionality of the AETA. *See* <http://www.theatlantic.com/national/archive/2011/12/trust-us-legislation-when-protest-becomes-an-act-of-terror/250580>.

4. Defendant Department of Justice (hereinafter "DOJ") is an agency of the United States.

5. The Bureau of Alcohol, Tobacco, Firearms and Explosives (hereinafter "ATF") is a component of the DOJ. The ATF has possession, custody and control of the records Plaintiff seeks.

JURISDICTION AND VENUE

6. This action arises under the Freedom of Information Act (“FOIA”), 5 USC § 552.

7. This Court has jurisdiction over the parties and subject matter pursuant to 5 USC § 552(a)(4)(B).

8. Venue is proper in this district pursuant to 5 USC § 552(a)(4)(B).

STATEMENT OF FACTS

BACKGROUND

9. The events surrounding the November 1988 attempted bombing at the U.S. Surgical Corporation (USSC) are of great significance to ongoing controversies at the intersections of the animal rights movement, federal law enforcement, federal legislation, and corporate power. USSC founder and chairman Leon Hirsch was frustrated at the inability or unwillingness of law enforcement to prevent animal rights protests of his company over USSC’s lethal use of live dogs in routine sales pitches for the company’s primary product, surgical staplers. Accordingly, Hirsch contracted the corporate intelligence and security firm Perceptions International (PI) to infiltrate and disrupt the animal rights movement. To this end, PI sent professional spy Mary Lou Sapone to infiltrate the animal rights movement. Sapone succeeded in this effort, even assuming the presidency of a local animal rights group.

10. Sapone’s most impressive accomplishment while undercover within the movement involved her befriending of NYC-based animal rights activist, and fierce opponent of USSC’s killing of dogs, Stephanie Fran Trutt. At PI’s behest, Sapone and another PI employee, Marcus Mead, convinced Trutt to bomb Hirsch at USSC

headquarters. The ATF had at least some knowledge of these events, although the exact nature and extent of the ATF's involvement in this affair remains unknown. On the evening of November 11, 1988, Mead drove Trutt from NYC to USSC in Norwalk, CT to carry out the attack. A police SWAT team was waiting and arrested Trutt as she placed the bomb.

11. Trutt eventually pled guilty to state and federal charges and served one year in prison. The case received extensive press coverage and Hirsch, USSC, and even the Department of Justice, loudly touted the case as proof of the terrorist nature of the animal rights movement and of the need for controversial new laws explicitly targeting animal rights and environmental activists. Many in the animal rights movement and the press were disappointed by Trutt's decision to accept plea agreements, thereby avoiding trials that would have shed light on the shrouded and deeply troubling series of events surrounding the case. As a result, the exact nature of the relationships between federal law enforcement (including the ATF), local law enforcement, corporate interests, private security firms, and the animal rights movement in co-producing a high-profile terrorist attack, and the crucial notion of "animal rights terrorism" that was dramatically strengthened as a result of the affair, remain concealed from the public.

12. The Animal Liberation Front (ALF) is an underground direct action animal rights organization. The ALF was the first animal rights organization intensively investigated by the FBI, as well as the first animal rights organization designated by the FBI as a terrorist group. A February 1989 California DOJ report, "Criminal Activities Within the Animal Rights Movement," speaks directly to federal and state law enforcement understanding and handling of the animal rights movement at the onset of serious law enforcement attention to the movement in the state in which that attention first occurred.

THE ANIMAL LIBERATION FRONT (ALF) REQUEST

13. On or about January 29, 2010, Plaintiff sent a FOIA/PA request to the FBI via First Class mail requesting a copy of “any and all information pertaining to the organization the Animal Liberation Front.”

14. In a letter sent to Plaintiff dated February 18, 2010, the FBI acknowledged receipt of Plaintiff’s FOIA/PA request described in the previous paragraph and assigned it tracking number 1143549-000.

15. Plaintiff received a letter from the ATF dated June 22, 2011 which stated that the FBI had forwarded documents to the ATF for processing. The letter indicated that the ATF had assigned the request file number 11-628. The letter indicated that document 63 was being withheld pursuant to exemption 4, that document 119 was being withheld pursuant to exemption 7(c), that document 150 was being withheld pursuant to exemption 7(e), and that document 167 was being withheld pursuant to exemption 7(d).

16. On or about August 8, 2011, Plaintiff sent a letter to the DOJ’s Office of Information Policy (hereinafter “OIP”) appealing the withholding of documents responsive to his FOIA/PA request (11-628). In his appeal, Plaintiff challenged ATF’s failure to release segregable portions of all of the withheld documents, and of document 167 in particular.

17. In a letter sent to Plaintiff dated August 19, 2011, OIP acknowledged receipt of Plaintiff’s FOIA/PA appeal described in the previous paragraph and assigned it tracking number AP-2011-02862.

18. In a letter sent to Plaintiff dated September 20, 2011, OIP affirmed the ATF’s withholding of documents in appeal AP-2011-02862.

THE U.S. SURGICAL BOMBING REQUEST

19. On September 2, 2011, Plaintiff sent a FOIA/PA request to the ATF via First Class mail requesting information about the November 11, 1988 attempted bombing at the Norwalk, Connecticut U.S. Surgical Corporation (USSC), and the events leading up to and following this attempting bombing. Attached to Plaintiff's FOIA/PA request were five documents which demonstrate ATF's involvement in the USSC bombing affair. Plaintiff's FOIA/PA request sought "disclosure of any and all records that were prepared, received, transmitted, collected and/or maintained by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Domestic Terrorism Task Force (DTTF), the National Joint Terrorism Task Force, or any Joint Terrorism Task Force referring or relating to:

- 1) The 11 November 1988 attempted bombing at the Norwalk, Connecticut U.S. Surgical Corporation (USSC),
- 2) Any and all involvement or knowledge of the ATF and/or agents thereof, including but not limited to *ATF Special Agent Vito S. DeMarco (aka Vito DeCarlo)*, in the events leading up to the attempted bombing, the attempted bombing itself, and the events following the attempted bombing.
- 3) The Perceptions International (PI)-led infiltration of the animal rights movement that led up to the attempted bombing,
- 4) Federal and local law enforcement (including but not limited to the ATF, the FBI, and the Norwalk Police Department, the Domestic Terrorism Task Force (DTTF), the National Joint Terrorism Task Force or any Joint Terrorism Task Force), and/or other federal or local governmental agencies *involvement in and/or knowledge of the infiltration of the animal rights movement that led up to the attempted bombing,*
- 5) Federal and local law enforcement (including but not limited to the ATF, FBI, and the Norwalk Police Department, the Domestic Terrorism Task Force (DTTF), the National Joint Terrorism Task Force, or any Joint Terrorism Task Force), and/or other federal or local governmental agencies *involvement in and/or knowledge of the plan to encourage an animal rights activist to attempt the bombing,*
- 6) Federal and local law enforcement (including but not limited to the ATF, the FBI, and the Norwalk Police Department, the Domestic Terrorism Task Force (DTTF), the National Joint Terrorism Task Force, or any Joint Terrorism Task Force), and/or other federal or local governmental agencies *knowledge, preparations, and/or operations in anticipation of the attempted bombing,*

7) Federal and local law enforcement (including but not limited to the ATF, the FBI, the Norwalk Police Department, the Domestic Terrorism Task Force (DTTF), the National Joint Terrorism Task Force, or any Joint Terrorism Task Force), and/or other federal or local governmental agencies *investigations of the attempted bombing and/or its component crimes,*

8) Federal and local law enforcement (including but not limited to the ATF, the FBI, the Norwalk Police Department, the Domestic Terrorism Task Force (DTTF), the National Joint Terrorism Task Force, or any Joint Terrorism Task Force), and/or other federal or local governmental agencies *involvement in, consulting for, and/or monitoring of the subsequent federal and state trials of Stephanie Fran Trutt, the attempted bomber.*

9) Any and all *communications* relating or referring to any of the above by and/or between any of the following: federal law enforcement, (including but not limited to the ATF and FBI), other federal agencies, local law enforcement (including but not limited to the Norwalk Police Department), other local agencies, the Domestic Terrorism Task Force (DTTF), the National Joint Terrorism Task Force or any Joint Terrorism Task Force, USSC and USSC personnel (including USSC CEO *Leon Hirsch* and USSC Director of Corporate Security *James Rancourt*), hired agents of USSC (including but not limited to *Perceptions International* and its chief *Jan R. Reber*), hired agents of *Perceptions International* (including but not limited to *Mary Lou Sapone* and *Marcus Mead*), and affiliated front groups for USSC (including but not limited to the USSC-funded pro-animal experimentation advocacy organization *Americans for Medical Progress (AMP)* and the similar *National Association for Biomedical Research (NABR)* and the *Foundation for Biomedical Research (FBR)*)).”

20. In a letter sent to Plaintiff dated September 28, 2011, the ATF stated that a search of its records “failed to produce the requested information.” The letter referred to Plaintiff’s request as described in the previous paragraph as file number 11-1208.

21. In truth and in fact, the ATF has multiple records that would have been responsive to Plaintiff’s FOIA/PA request (11-1208). The ATF maintains records relating to the USSC bombing incident in file number 63250-89-4008N, including, for example, correspondence to and from Special Agent in Charge Terrence J. McArdle, Boston District Office.

22. On October 3, 2011, Plaintiff submitted an appeal to OIP regarding his FOIA/PA request number 11-1208. Plaintiff’s appeal to OIP was mailed via Priority Mail, Delivery Confirmation (0308 0660 0001 4568 2890) and according to information from the U.S. Postal Service, was delivered on October 11, 2011. Plaintiff’s appeal

contained a list of ATF record systems and keywords that he requested ATF to search. Plaintiff's appeal also requested that ATF be required to search the records of both field offices (New York and Connecticut) which were involved in the USSC bombing affair.

23. In a letter sent to Plaintiff dated October 24, 2011, OIP acknowledged receipt of Plaintiff's FOIA/PA appeal described in the previous paragraph and assigned it tracking number AP-2012-00167.

24. OIP's response to Plaintiff's FOIA/PA appeal (AP-2012-00167) was due twenty working days after OIP received it on October 11, 2011, which would have been November 8, 2011.

25. As of the filing of this Complaint, Plaintiff has not received a response to his FOIA/PA appeal (AP-2012-00167) with a determination regarding his appeal.

26. Under 5 USC § 552(a)(6)(C)(i), Plaintiff is deemed to have exhausted his administrative remedies with regard to his FOIA/PA request (11-1208) because OIP has failed to comply with the statutory time limit.

COUNT I:
VIOLATION OF FOIA

27. This Count realleges and incorporates by reference all of the preceding paragraphs.

28. Defendant has violated FOIA by improperly withholding records responsive to Plaintiff's FOIA/PA request regarding ALF (ATF tracking number: 11-628; OIP Appeal number: AP-2011-02862).

29. Defendant has violated FOIA by failing to perform an adequate search in response to Plaintiff's FOIA/PA request regarding the U.S. Surgical Bombing Affair

(ATF tracking number: 11-1208) and by failing to timely respond with a determination as to Plaintiff's appeal regarding the same (tracking number AP-2012-00167).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- (1) Declare Defendant's failure to comply with FOIA to be unlawful;
- (2) Enjoin Defendant from continuing to withhold the records responsive to Plaintiff's FOIA/PA requests and otherwise order Defendant to produce the requested records without further delay;
- (3) Grant Plaintiff an award of attorney fees and other litigation costs reasonably incurred in this action pursuant to 5 USC § 552(a)(4)(E)(i); and
- (4) Grant Plaintiff such other and further relief which the Court deems proper.

Respectfully Submitted,

/s/ Jeffrey Light

Jeffrey L. Light
D.C. Bar #485360
1712 Eye St., NW
Suite 915
Washington, DC 20006
(202)277-6213

Counsel for Plaintiff